

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONNIE L. MCDANIEL,

Plaintiff,

vs.

CHRISTOPHER H. CHENG, *et al.*,

Defendants.

Case No. 2:08-cv-01105-KJD-GWF

**FINDINGS AND
RECOMMENDATIONS**

On August 21, 2008, Plaintiff submitted his Motion to Proceed *In Forma Pauperis* (#1). However, the Court was unable to determine whether Plaintiff could proceed *in forma pauperis* as a result of Plaintiff not submitting a completed application to proceed *in forma pauperis*. On August 25, 2008, the Court issued Order (#2), which denied Plaintiff's Motion to Proceed *In Forma Pauperis* (#1) without prejudice, and directed Plaintiff to pay the appropriate filing fee of \$350.00, or submit a completed application to proceed *in forma pauperis* by **September 25, 2008**. Plaintiff was advised that failure to comply with Order (#2) would result in the recommendation that his action be dismissed. To date, Plaintiff has not complied with Court Order (#2) within the allotted time period, and the time allowed has expired. Accordingly,


IT IS HEREBY RECOMMENDED that this action should be **dismissed** without prejudice based on Plaintiff's failure to either pay the appropriate filing fee of \$350.00, or submit a completed application and affidavit in support of a request to proceed *in forma pauperis*.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the

1 courts of appeal may determine that an appeal has been waived due to the failure to file objections
2 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)
3 failure to file objections within the specified time and (2) failure to properly address and brief the
4 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
5 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
6 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

7 DATED this 7th day of October, 2008.

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10 **GEORGE FOLEY, JR.**
11 **UNITED STATES MAGISTRATE JUDGE**
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